



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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February 16, 2006

NORMAN KJONO
16149 REDMOND WAY NO. B221
REDMOND WA 98052

Subject: Complaint Filed Against the Snohomish Health District – PDC Case No. 05-096

Dear Mr. Kjono:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint received August 17, 2004, alleging that the Snohomish Health District: 1) violated RCW 42.17.130 by sponsoring advertising that supported Initiative 890, a statewide initiative campaign, and 2) used public facilities to support Initiative to the Legislature 332. I apologize for the length of time it has taken to complete our investigation. As stated in an August 20, 2004 letter from PDC Director of Compliance Phil Stutzman, your allegation concerning I-332 was investigated as an alleged violation of RCW 42.17.190, the section of law dealing with lobbying by public agencies.

PDC staff reviewed your complaint in light of the following statutes and administrative rule:

RCW 42.17.130 prohibits persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of the promotion of, or opposition to, any ballot proposition. This prohibition does not apply to activities which are part of the normal and regular conduct of the office or agency.

WAC 390-05-273 defines “normal and regular conduct” as conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.

RCW 42.17.190 prohibits public agencies from using public funds for direct or indirect lobbying, except in cases where the agency is communicating directly with elected officials or officers or employees of public agencies on matters pertaining to official agency business. With certain exceptions, this section also prohibits the use of public facilities to support or oppose an initiative to the legislature; the exceptions include activities that are part of the normal and regular conduct of the office or agency.



I.

You alleged that in June of 2004, the Snohomish Health District sponsored billboards featuring images of workers in food service areas, bowling alleys and casinos, followed by the statement "There is no safe level of exposure to secondhand tobacco smoke...Smoke-free work places: Good for public health." You alleged that this constituted a use of public facilities to support I-890 and I-332, which would have expanded Washington's Clean Indoor Air Act to ban smoking in businesses previously exempt from smoking bans under that law.

We found that:

- In June of 2004, billboards and bus placards featuring the "Smoke-Free Work Places" message and indicating that they were sponsored by the Snohomish Health District were displayed in Snohomish County. In the spring of 2004, radio advertising that identified the Snohomish Health District as the sponsor was aired in the Snohomish County area to urge for smoke-free workplaces in restaurants, bars, and casinos. None of the advertisements explicitly mentioned any ballot measure or legislation to ban indoor smoking.
- The advertisements were designed or written by the staff of the Snohomish Health District's Tobacco Prevention and Control Program, but were paid for by the Snohomish County Human Services Department. The Snohomish County Human Services Department is a division of Snohomish County government. The Snohomish Health District is a separate municipal corporation, not connected to the county government or to the Snohomish County Human Services Department. The total cost to the Snohomish County Human Services Department for billboards, bus placards, and radio advertisements urging smoke-free public venues was \$20,108.
- The Snohomish Health District had an established practice of sponsoring advertising to encourage voluntary smoke-free policies in restaurants and other specific venues that were formerly exempt under the Clear Indoor Air Act. For several years, the agency has spent tens of thousands of dollars on advertisements encouraging such voluntary policies. The "Smoke-Free Work Places" billboards and other media designed or written by the district's staff were a continuation of the agency's past work in this regard.
- The media program of which the billboards were a part was designed before I-332 was filed with the Office of the Secretary of State. This program was scheduled to continue until June of 2005, long after the signature gathering phases of both initiatives, and after the final disposition of I-890 was determined. There was no evidence that the "Smoke-Free Work Places" advertisements were designed to influence any ballot measure or legislation.

The amount spent by the Snohomish County Human Services Department on smoking-related advertising in 2004 exceeded that agency's normal expenses for media on that subject. However, the agency had no input into the content of the advertisements, and its staff first saw examples of the "Smoke-Free Work Places" billboards after they had been erected. In its request for funding of the media program, the staff of the Snohomish Health District stated that the program's objective was the adoption of voluntary smoke-free policies, leading to an increased proportion of businesses that restrict or do not allow smoking. There was no evidence that the Snohomish County Human Services Department provided this funding for the purpose of supporting any ballot measure or initiative.

II.

You alleged that the "Smoke-Free Work Places" advertisements as well as Web pages sponsored by the Snohomish Health District contained false statements concerning secondhand tobacco smoke that promoted passage of I-890 in violation of RCW 42.17.130. The alleged false statements were "*There is no safe level of exposure to secondhand tobacco smoke.*" and "*If you are in a smoky bar or room for 2 hours it is as if you've smoked 4 cigarettes.*"

M. Ward Hinds, M.D., Health Officer for the Snohomish Health District, provided copies of several studies, reports, and other documents that supported these statements. PDC staff is satisfied that the Snohomish Health District relied on the documentation in its possession, and believed it had a reasonable basis on which to make the statements referenced in your complaint. Therefore, this allegation will be dismissed.

III.

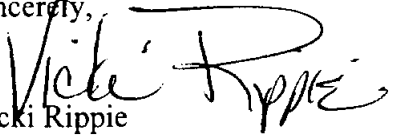
In the course of the PDC's investigation, staff found that the Snohomish Health District spent \$389 in 2004 for a newspaper advertisement and a press release that encouraged the reader to contact his or her legislator. The expenditures were limited in nature, and in the case of the newspaper advertisement, was stopped after two printings as soon as it came to the attention of Dr. Hinds. The PDC takes seriously the prohibition against public agencies lobbying the legislature in ways not allowed by law. However, due to the limited nature of the activity and the actions taken by Snohomish Health District officials to terminate it, enforcement is not warranted in this instance. The officials of Snohomish Health District will be cautioned to refrain from using public funds in the future for any lobbying other than approved direct lobbying on official agency business.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against the Snohomish Health District. The Snohomish Health District is being notified of this dismissal by separate letter.

Norman Kjono
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If you have questions, please feel free to contact Phil Stutzman, Director of Compliance,
at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,


Vicki Rippie
Executive Director